ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

Case No. 82-6110

JAMES DAVID RAULERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONSE TO THE PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND THE UNITED STATES SUPREME COURT

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COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

References to the State's appendix shall be by the symbol "SA" followed by the appropriate page number. Any other record references shall be to Petitioner's petition or appendix, indicated by his appropriate symbol.

OPINION BELOW

Petitioner seeks review of his opinion sub nominee Raulerson v. State, 420 So.2d 567 (Fla. 1982).

JURISDICTION

Petitioner improvidently seeks to invoke this Court's jurisdiction pursuant to Title 28, U.S.C., Section 1257(3). The issues raised by Petitioner should not be reviewed by this Court. Review by writ of certiorari is a matter of sound judicial discretion, and will be granted only where there are special and important reasons therefor. Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974).

STATEMENT OF THE CASE

The State accepts Petitioner's Statement of the Case.

QUESTIONS PRESENTED

I. (RESTATED)

THE COURTS BELOW PROPERLY REFUSED TO ALLOW ATTORNEY BUSH TO WITHDRAW AND PETITIONER'S RESENTENCING DID NOT VIOLATE HIS CONSTITUTIONAL RIGHTS.

Petitioner alleges that his constitutional rights were violated because the courts below did not allow his attorney to withdraw because of an alleged conflict of interest and because the trial court denied an overnight recess in order to allow counsel to prepare a closing argument for his resentencing due to a "Gardner violation" (Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977)).

In regard to Petitioner's alleged conflict of interest with his counsel and request for either private counsel or to represent himself, Petitioner includes in his appendix the trial court's order denying David Busch's Motion to Withdraw and Petitioner's Motion for Pro Se Representation along with "selected" portions of the hearing held in regard to these requests. (Petitioner Appendix II). In only presenting this Court with selected portions of that hearing, Petitioner has made it appear that the trial court's ruling was not predicated upon reasonable grounds. Attached hereto and by reference made a part hereof is the State's appendix, which contains the complete transcription of that hearing.

Although the right to counsel is absolute, there is no absolute right to particular counsel. United States ex rel. Carey v. Rundle, 409 F.2d 1210 (3d Cir. 1969), cert. denied sub nominee Carey v. Rundle, 397 U.S. 946, 90 S.Ct. 964, 25 L.Ed.2d 127. The right to retain counsel of one's choice is not absolute; such a right cannot be insisted upon in a way that will obstruct the orderly judicial procedure and deprive courts of their inherent power to control the administration of justice. United

States v. Burton, 584 F.2d 485 (D.C. Cir. 1978), cert. denied 439 U.S. 1069, 99 S.Ct. 837, 59 L.Ed.2d 34.

Here, Petitioner wanted private counsel but could not afford private counsel. Put another way, Petitioner wanted particular counsel. When Petitioner attempted to obtain private counsel, and was told by the trial court that he was not entitled to obtain private counsel, Petitioner then (in a rambling way) indicated that he wished to represent himself. (SA-13). However, when the Court attempted to inquire as to whether Petitioner was able to represent himself properly, Petitioner had a temper tantrum and apparently stormed out of the Court, abandoning his request for pro se representation. (SA-15-19). Petitioner was obviously incapable of abiding by the rules of criminal procedure and comporting himself properly and consequently, the trial court did not err in refusing to discharge counsel Busch after Petitioner indicated he was incapable of representing himself. See Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562, 581, note 46 (1975).

In addition to not presenting this Court with the full facts concerning the hearing in the trial court concerning the alleged "conflict of interest" existing between Petitioner and Petitioner's counsel, Petitioner has pointed to no case which, under the circumstances here, would have required a different result by the trial court. As indicated by the hearing on this matter, the trial court had no other choice than to do what it did.

As for Petitioner's complaint that the trial court abused its discretion in denying a continuance in order for counsel to prepare for closing argument, that issue was thoroughly explored and explained by the Florida Supreme Court:

> The court did not refuse counsel the opportunity to present closing argument--it refused to delay presentation thereof until the next morning. Appellant's attorneys could have given a closing argument had they been willing to do so that evening. In Herring v. New York,

422 U.S. 853, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975), cited by appellant, counsel for the defendant was denied any chance of making a closing argument.

It was within the sentencing court's discretion to grant or refuse the motion for continuance. The presiding judge evidently felt that all of the parties involved were sufficiently fit to complete the proceedings that evening rather than continuing them into the following day. He, the attorneys for both sides, and everyone else necessary to conduct the hearing had been present all day, so appellant's attorney was not subjected to any more stress than anyone else involved int he proceeding. Furthermore, the record shows that the judge offered a dinner break which counsel for appellant refused as inadequate. Finally, we note that the hearing did not begin until 10:30 a.m., and that a two-hour lunch break was taken by all.

The trial judge did not abuse his discretion by refusing the continuance. The day does not appear to have been unreasonably long or strenuous; certainly, it was no longer than those endured in many other courtrooms in other proceedings. Defense counsel was not alone in the length of time worked that day. A break was taken at midday and another offered that evening and appellant's counsel was not denied the opportunity to make a closing argument; he turned it down. In light of the foregoing, we cannot find the refusal to continue the proceeding until the next day to be error.

Id. at 572-573.

II.

PETITIONER'S RIGHTS TO DUE PROCESS WERE NOT VIOLATED WHEN THE TRIAL COURT REFUSED TO HAVE ANOTHER JURY RECOMMENDATION PRIOR TO RESENTENCING PETITIONER.

Petitioner argues that his "fundamental" rights to due process were violated because the trial court did not allow the selection of another sentencing jury after the Florida courts were ordered to give Petitioner a hearing on the alleged Gardner violation.

This issue is completely without merit. In addition to the fact that the jury only recommends the sentence in Florida

(it does not impose it), the reason that the federal district court granted Petitioner's petition for writ of habeas corpus was because allegedly Petitioner had not had an opportunity to rebut any of the statements found in the presentence investigation report. That report, of course, was directed to the trial court, not to the jury. The jury had already rendered its recommendation and any error that occurred subsequent to that recommendation would not require a new sentencing recommendation. Moreover, the federal district judge specifically ordered that the State was not required to impanel another advisory jury:

> The Petition for Writ of Habeas Corpus is granted, however Petitioner shall remain in the custody of the Superintendent of the Florida State Prison. The State of Florida shall have sixty days within which to afford to Petitioner a new sentencing hearing and imposition of sentence, without the necessity of an advisory jury, providing for Petitioner, his counsel and counsel for the State full opportunity to be heard regarding the content of the presentence investigation report, as well as other matters properly considered by the trial court concerning Petitioner's sentence; absent such hearing without good cause, Respondent shall release Petitioner from custody.

(Emphasis added). Raulerson v. Wainwright, 508 F.Supp. 381, 385 (M.D. Fla. 1980).

Any implications or statements to the contrary in Petitioner's petition (i.e., that the federal district judge intended by his order that the State afford Petitioner another advisory jury) is disingenuous on Petitioner's part.

III.

THE FLORIDA DEATH PENALTY SENTENCING PROCEDURE AS APPLIED TO PETITIONER DID NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS.

Petitioner argues that the Florida Death Penalty procedure as applied to him was unfair because the courts below found two aggravating circumstances which were not supported by the record or by case law and that, as such, the imposition of the death penalty is invalid.

First, under Florida law, Petitioner cannot contest the validity of these aggravating circumstances at this late date as they were all reviewed in Petitioner's direct appeal to the Florida Supreme Court in Raulerson v. State, 358 So.2d 826 (Fla. 1978), cert. denied 439 U.S. 959, 99 S.Ct. 364, 58 L.Ed.2d 352 (1978).

Second, the aggravating circumstances about which Petitioner complains are all valid under Florida law. As for Petitioner's contention that the crime was not heinous, atrocious, or cruel, Petitioner's crime was no different than those of the defendants in Douglas v. State, 328 So.2d 18 (Fla. 1976), Brown v. State, 381 So.2d 690 (Fla. 1980) or Zeigler v. State, 402 So.2d 365 (Fla. 1981), where, based on the totality of the circumstances, the finding was upheld by the Florida Supreme Court. Nonetheless, the Florida Supreme Court, in an effort to be overly fair, reached the merits of this issue and vacated this finding:

> There is merit, however, to appellant's argument regarding the finding that the killing was heinous, atrocious, and cruel. See section 921.141(5)(h). Applicable here is the observation made in Williams v. State, 386 So.2d 538, 543 (Fla. 1980), quoting State v. Dixon, 283 So.2d 1, 9 (Fla. 1973), cert. denied, 416 U.S. 943, 94 S.Ct. 1951, 40 L.Ed.2d 295 (1974): "The murder while utterly reprehensible, was not 'accompanied by such additional acts as to set the crime apart from the norm of capital felonies--the conscienceless or pitiless crime which is unnecessarily torturous to the victim.'" We held that killings similar to this one were not heinous, atrocious, and cruel. See Williams v. State; Fleming v. State, 374 So.2d 954 (Fla. 1979); and Cooper v. State, 336 So.2d 1133 (Fla. 1976), cert. denied, 431 U.S. 925, 97 S.Ct. 2200, 53 L.Ed.2d 239 (1977). There being no finding of mitigating circumstances, the error was harmless. Sireci v. State, 399 So.2d 964 (Fla. 1981).

420 So.2d at 571-572.

However, as the Florida Supreme Court noted, (notwithstanding Petitioner's argument) as there were no mitigating circumstances, and as this Court has not ruled that the finding of an invalid statutory aggravating circumstance absent mitigating circumstances requires automatic

reversal, Petitioner's complaint is without merit.

As for Petitioner's complaint that the trial court erred in finding that his actions did create a great risk of death to "many" persons, the Supreme Court of Florida properly held:

> Appellant's action did create a great risk of death to many persons. Section 921.141(5)(c), Florida Statutes (1973). There were four non-participating, unarmed, and innocent people present in the restaurant during the shoot-out between appellant and the police. That they took refuge on the floor behind tables and counters certainly does not mean that they were in no risk of being killed. A gun battle in a confined area certainly created a "likelihood" or "high probability" that someone, bystanders or police officers, would be hit and killed. See Kampff v. State, 371 So.2d 1007 (Fla. 1979); Section 921.141(5)(c) was applicable.

420 So.2d at 571.

The State would just point out that what distinguishes Petitioner's case from the cases cited by Petitioner in his petition is the fact that a grating gun battle ensued between the police and Petitioner, with innocent bystanders caught in the middle. As such, there was a great risk of death to "many" persons, including Petitioner, the police, and the other innocent bystanders present. See, e.g., King v. State, 390 So.2d 315 (Fla. 1980), cert. denied 450 U.S. 989, 101 S.Ct. 1529, 67 L.Ed.2d 825.

At any rate, the State would maintain that Petitioner's due process was not violated because of the finding of these two aggravating circumstances. See Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976) and the State of Florida's brief in Barclay v. Florida, case number 81-6908 (presently pending).

CONCLUSION

Based on the foregoing arguments and authorities, this Court should decline to exercise its discretionary jurisdiction.

Respectfully submitted,

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Attorney General

BY: David P. Gauldin
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CERTIFICATION OF SERVICE

I hereby certify that I have placed in the United States Mail, postage prepaid, one (1) copy of the Response to the Petitioner's Petition for Writ of Certiorari to the Supreme Court of Florida and the United States Supreme Court, and the Appendix thereto, to counsel for the Petitioner James David Raulerson:

Joseph F. Keefe
179 Water Street
Torrington, Connecticut 06790

on February 25th, 1983.

David P. Gauldin

David P. Gauldin

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

Case No. 82-6110

JAMES DAVID RAULERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

APPENDIX

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO. 75-1325 CF
DIVISION T

STATE OF FLORIDA

-vs-

JAMES DAVID RAULERSON

ORDER DENYING MOTION TO
DISCHARGE COUNSEL AND
TO PROCEED PRO SE

On January 12, 1981, the Florida Supreme Court entered an order temporarily relinquishing jurisdiction to this Court for a hearing on the Defendant's request to discharge counsel and to proceed pro se on his appeals pending before the Florida Supreme Court in Case Nos. 59,630 and 59,757.

A hearing was held before this Court on February 6, 1981 at which the Court heard from the Defendant who was present before the Court. Also present was Defendant's counsel, David Busch, Esquire, Assistant Public Defender of the 2nd Judicial Circuit. A copy of the transcript of said hearing is attached hereto. The Court finds that the Defendant's purported waiver of his right to be represented by counsel on the pending appeals has not been intelligently and knowingly waived. The Court further finds that, based upon the Court's efforts to communicate with the Defendant at said hearing, and the Defendant's nonresponsive statements and demeanor, the Defendant is either incapable or unwilling to understand or abide by even the most fundamental of legal procedures, and is wholly incompetent to represent himself on the pending appeals. For the reasons hereinabove set forth and as stated by the Court at the conclusion of the hearing, it is

ORDERED AND ADJUDGED that the Defendant's above referred motion is denied.

DONE AND ORDERED at Jacksonville, Duval County, Florida, on this

10th day of February, 1981.

ORIGINAL SIGNED:
RALPH W. NIMMONS, JR.
CIRCUIT JUDGE

Copies To:

Hon. Sid J. White, Clerk of
Florida Supreme Court
Ralph N. Greene, III, Esq.
Carolyn Snurkowski, Esq.
David J. Busch, Esq.
James David Raulerson

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 75-1325 CFA

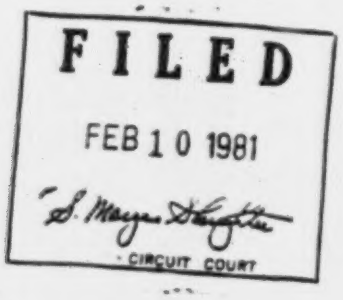
DIVISION: "T"

STATE OF FLORIDA,

vs.

JAMES DAVID RAULERSON,

Defendant.



Proceedings taken before The Honorable Ralph W. Nimmons, Jr., Circuit Judge, on Friday, February 6, 1981, in Courtroom No. 5, Duval County Courthouse, Jacksonville, Florida, as reported by Sherrie L. Warren, an Official Deputy Court Reporter.

APPEARANCES:

RALPH N. GREENE, III, Esquire, Assistant State Attorney

ROBERT L. BUSCH, Esquire, Attorney for Defendant

P R O E E D I N G S

February 6, 1981

- - -

MR. BATEH: Your Honor, I believe Mr. Greene and Mr. Busch are present if the Court would like to hear the Raulerson case at this time.

The State would call the case against James David Raulerson, 75-1325.

THE COURT: All right. The defendant, James David Raulerson, is before the Court today pursuant to the Florida Supreme Court's Order entered January 12, 1981 in which the Court relinquished the jurisdiction temporarily to determine the defendant, or appellant's request to discharge his counsel and to proceed in proper person.

Are you ready to proceed at this time, Mr. Raulerson?

MR. RAULERSON: Well, Your Honor, I'd like a little clarification for myself in the record inasmuch as I filed a 1983 against Mr. Busch. And on finding that it properly wasn't necessary challenged to go, then I filed a motion to dismiss him, and incorporated in that was the -- I addressed the issue that I had addressed you in writing previous to resentencing. So, I'm confused as to

whether or not my sentence has been vacated or where I stand in order to proceed.

THE COURT: I understand you, Mr. Raulerson. Your sentence has not been vacated. Counsel can correct me if I am wrong. And for the record Mr. Busch is present here in the courtroom.

I have not had occasion to follow this case since you last appeared before this Court. And my understanding is that there is an appeal pending in the Florida Supreme Court from the judgment and sentence in which this Court entered.

MR. GREENE: As far as I am concerned that is exactly the situation. Mr. Busch knows probably more than I, the exact status of the case. But, there is an appeal pending in the Florida Supreme Court. And then following the -- that appeal, Mr. Raulerson requested the Court to discharge his counsel, Mr. Busch, and either allowing him to proceed on his own or have another private attorney appointed.

The Supreme Court denied his request to have a private attorney appointed and returned it to us to determine whether or not Mr. Raulerson really does want to represent himself and discharge Mr. Busch.

Is that accurate?

MR. BUSCH: That's how I understand it, Your Honor.

There is just however actually two appeals pending before the Florida Supreme Court. One of them being an appeal from the denial of the Rule 3.850, a motion which was filed with this Court to the Gardner case, and the appeal from the imposition of the death sentence which this Court imposed following the Gardner proceeding.

THE COURT: There are two case numbers in the style of the order from the Florida Supreme Court, and I suppose that's the reason for that there.

MR. BUSCH: Yes, sir.

THE COURT: Two cases that are presently pending. As a matter of fact, 3850, I think, was filed originally in DCA, was it not?

MR. BUSCH: Yes, sir.

THE COURT: And then transferred to the Florida Supreme Court.

All right. Mr. Kaulerson, so the issue before this Court is to determine whether the trial court will permit you to represent yourself in the Florida Supreme Court on the two pending

cases, the two pending appeals. One, your appeal from the judgment and sentence I entered, and also the appeal from the denial of the 3.850 motion.

Now, the Supreme Court previously denied your request to appoint additional counsel to represent you. So, the sole issue is as to whether or not the trial court should permit you to represent yourself.

I will ask you first, is it your desire to represent yourself on those appeals?

MR. RAULERSON: Well, Your Honor, my desire in the writing to you was to represent myself, previous to sentencing that I wish to act pro se there. That is the address, that's what I addressed to the Supreme Court, in writing stating the decision just as to what it was in there. I get the letter where they say they've relinquished jurisdiction to you. So, I can only assume that they're drawing to your attention that you perhaps should address the pro se motion that I filed to you previous to resentencing.

THE COURT: No, that's not it at all. I assume that that may be an issue before the Florida Supreme Court as to whether or not the court erred

in its ruling upo the request that you made before resentencing. But, you are not here today for the purpose of revisiting of whether the trial court erred with respect to those motions which you previously filed.

The sole issue, listen very carefully.

MR. RAULERSON: Yes, sir. Now, I understand, Your Honor --

THE COURT: The sole issue is as to whether or not you wish to represent yourself in the Florida Supreme Court on the two pending appeals. And if so, if you do tell me that you do want to represent yourself and fire or disemploy your attorney, then I need to inquire as to whether or not I ought to permit you to do that.

Now, first of all, do you want to represent yourself on this appeal?

MR. RAULERSON: I really can't see how I possibly can, Your Honor.

I filed the habeas corpus with you. And my sole issue has been the fact that I tried previous to resentencing to represent myself there.

THE COURT: Well, you had asked to act as co-counsel.

MR. RAULERSON: Yes, sir. And you denied it.

THE COURT: Which I denied.

MR. RAULERSON: Yes, sir.

MR. GREENE: Your Honor, I'd like to just clarify the record.

The defendant was told he could not act as co-counsel, he could either represent himself or have counsel represent him. And he decided since he could not act as co-counsel he would like to have his counsel represent him. That he was given two options and he chose to have Mr. Busch represent him at the sentencing, simple as that.

MR. RAULERSON: That is not true.

MR. GREENE: And the record will reflect that. But, be it as it may, certainly the Court is correct in the situation we are here now, and that is solely whether or not Mr. Raulerson wants to represent himself on appeal or have someone represent him.

THE COURT: Well, Mr. Raulerson, I think you are quite correct in being concerned about representing yourself on the pending appeal. I don't need to tell you the gravity of the case and the involved nature of the legal issues that may be raised on appeal.

So, your option really is whether you will

continue to be re resented by your attorney or whether you wish to fire him and represent yourself. And if you tell me that you do not wish to represent yourself then I will not permit your attorney to be fired.

MR. RAULERSON: Well, Your Honor, I come into a court of law and try to address the issues, and I continuously find myself witnessing near collusion between you and the State Attorney's Office to undermine my appeal. And, you know, I don't care what you do or how you do it except that I want to go by the record, by the law, it's all in the books.

I can't communicate with Mr. Busch.

THE COURT: Do you want to represent yourself or not on these appeals, Mr. Raulerson?

Do you want me to give you some time to think about it and call the case back up?

MR. RAULERSON: Well, Your Honor, I'd like to -- I'd like to know for one thing what the disposition is on the writ of habeas corpus on Jesse Tafero.

THE COURT: All right. You are referring to a handwritten motion for writ of habeas corpus ad testificandum that my secretary received in the

mail yesterday, and you requested an order of the Court to transport a prisoner or person from the state prison by the name of Jesse Joseph Tafero.

Do you want to be heard on that? What would this witness have to say about the issue as to whether or not you ought to represent yourself, you are to be permitted to represent yourself?

MR. RAULERSON: Well, I have to understand what allowance to begin with involving representing myself. I can't get access to any legal materials for some strange reason. And just like I had a lot of things that I wanted to bring to your attention in resentencing, and I couldn't do it. And I couldn't get Mr. Busch to do it.

So then, no, I don't know, Your Honor, you just put me in a predicament to where that I'm left with not many mere options, because I don't care to put my family through this for five more years.

THE COURT: Well --

MR. RAULERSON: Your Honor, I'm just -- you know, I'm about ready to withdraw my appeal and you can set me, you know, a death date and, you know, murder me if that's what you want to do. If that's what evidently are wanting to do, then I will accommodate you. And then, you know, if you want to give

me a retrial or they can kill me, you know, murder me. Of course, if you take someone's life it's killing them, and if I do it, you know, well, that's murder.

I don't know what to do.

THE COURT: All right. The Court would --

MR. RAULERSON: I can't get anything straight in the courtroom, Your Honor.

THE COURT: Mr. Raulerson, I will ask you once again do you wish to represent yourself or do you wish to --

MR. RAULERSON: I can't get a private attorney? I don't want any more State action in my case. I don't want Mr. Busch.

Now, I could assault the man. I don't know what a person has to do to get another attorney. Because, I'm not satisfied with his representation. And my life is at stake.

I'm sorry, Your Honor, it's just that, you know, I have been sick for months. I have to come in here dressed like a beggar. I live on a plantation over there. You know, they treat me like a nigger, and I'm not a nigger, Your Honor. I'm sorry.

I can't have a private attorney?

THE COURT: ou can if you can hire one, sir, if you've got the funds with which to hire one.

MR. RAULERSON: Well --

THE COURT: At any point in time during these proceedings if you are able to employ a private lawyer to represent you, I'm sure that the Florida Supreme Court would be pleased to entertain a motion for substitution of counsel.

Now, do you want to represent yourself on those appeals?

MR. RAULERSON: Well, Your Honor, I'd get an extension of time. And could you transfer Mr. Tafero here so that we can confer and I can address the issue. He knows more about law than I do.

THE COURT: Who is Mr. Tafero?

MR. RAULERSON: He is an inmate. And if I decide to go pro se and I'm entitled to Inmate Legal Assistance, and he knows more about the law, and he can address the issues to you more thoroughly than I can.

THE COURT: He's not a member of the bar of this Court, and of course, he would not be permitted to represent you, Mr. Raulerson, here in this Court or in the Florida Supreme Court.

MR. RAULERSON: Do you want to represent me,

Mr. Busch, or do you want to withdraw? You made a motion once to withdraw?

THE COURT: Mr. Raulerson, that's not really for Mr. Busch to determine whether or not he wishes to represent you or not. With all due respect for Mr. Busch, I don't think it would be fair to pose that question to him.

MR. RAULERSON: Well --

THE COURT: Do you wish to represent yourself and for the Court to discharge your present attorney?

MR. RAULERSON: There is no way that I could find out that in representing myself that I would be entitled to a little legal assistance and access to legal material?

THE COURT: Well, it is my understanding that, whether you may or may not be correct, that a law library can be made available for a prisoner's use.

Now, are either counsel aware of what the situation is over at the state prison system?

MR. BUSCH: I've never had occasion to visit the room or the facilities over there, Your Honor, to evaluate them. As an attorney, I understand that there is such a room, or such an area, and I think probably Mr. Raulerson could speak to that matter better than I could. I think he knows what

exists. I don't know whether Mr. Greene is familiar with that.

MR. GREENE: There is a law library at the state penitentiary, I understand, Your Honor. I myself have never been there either. I do understand that there is one and it is made available to individuals who wish to take advantage of the legal reference works that are there.

THE COURT: That has been my understanding, Mr. Raulerson, that there is a library that can be made available for the use of the inmates.

Have you not had occasion to experience that?

MR. RAULERSON: No, sir. We don't have access to the law library. They will send an aide back once every six months, maybe.

THE COURT: Well, I'm really sure that if you do represent yourself that the law library can be made available for your use on a reasonable basis.

With that assumption I will ask you, sir, whether you wish to represent yourself, and if you do, then I will inquire further as to whether you understand what you are doing.

MR. RAULERSON: Yes, sir, I will represent myself.

THE COURT: All right. Now, Mr. Raulerson, you have two appeals that are pending in the Florida Supreme Court that emanate from this Court. In order for me to determine whether you ought to be permitted to represent yourself, there are certain inquiries that need to be made. Some of the information I already know from the presentence investigation report. But, I will ask it for the record, what is your age, sir?

MR. RAULERSON: My age?

THE COURT: Yes, sir.

MR. RAULERSON: Thirty.

THE COURT: How far did you go in school?

MR. RAULERSON: High school.

THE COURT: Did you graduate from high school?

MR. RAULERSON: Yes, sir.

THE COURT: And so you read and write. Is that correct?

MR. RAULERSON: Yes, sir.

THE COURT: Have you ever had occasion to represent yourself in any legal proceedings before?

MR. RAULERSON: Sir, nothing of any thoroughness.

THE COURT: Have you had occasion --

MR. RAULERSON: Your Honor, why don't ya'll

just do whatever you want to do. I don't care anymore. You've undermined everything I tried to do.

Jesus loves you and so do I. And I've reached my limit.

Thank you.

THE COURT: The record will show that the defendant has, with his last comment, left the bar and returned without permission of the Court to the holding facilities. The Court having attempted to make inquiry of the defendant for the past approximately fifteen minutes or so to determine the defendant's competency to represent himself in the present appellate proceedings with the difficulty that I know is exhibited in the record now has been frustrated in that effort to determine whether he should be permitted to represent himself.

The defendant initially, when the Court inquired of his present desire insofar as representation, indicated that he didn't see how he could represent himself in the pending appeals. And frankly, the Court tends to agree with that assessment of the defendant, given the gravity of the case and the issues.

Further effort by the Court to obtain from the defendant his present position with respect to his desire to appeal, represent himself on the appeals, met with substantial difficulties and obvious uncertainties by the defendant. And although the defendant ultimately indicated that he would represent himself on appeal, given all the facts and circumstances, including the effort by the Court to inquire of the desires of the defendant and having observed the demeanor of the defendant before this Court, including apparently his becoming upset, I do not feel that the defendant has sufficient competence to represent himself. And before I finish this ruling if either counsel wish to be heard on this issue, I will hear either of you or both of you.

MR. GREENE: Your Honor, I just would like to say that the final words of Mr. Raulerson is for the Court to do what it wishes. I would agree with the Court's assessment that -- and Mr. Raulerson's earlier assessment that he really didn't see how he could represent himself on appeal.

Apparently, his primary interest was to go back and reopen the issue of being represented

back at the sentencing hearing last summer, it occurred last summer and not -- apparently today he didn't really come here today with the intent to represent himself on appeal, though that's why the Supreme Court sent it back to us.

I think he was upset by the fact that he really didn't see how he could. And his final words to the Court to do what it wished, are significant, and I feel the Court -- it would be appropriate for the Court to -- you know, given the total nature of this short hearing and his attitude and what he actually said, I think it would be appropriate for the Court to have the Public Defender's Office remain handling the case and have Mr. Busch remain as Mr. Raulerson's lawyer on these two appeals.

THE COURT: Mr. Busch, do you have anything that you would like to say at this time?

MR. BUSCH: No, Your Honor, I feel very uncomfortable about making any statements in the Court, because I'm placed in a difficult position.

As his attorney, I don't want to say anything that -- well, I don't want to make any comments.

THE COURT: I can appreciate that.

Well, based upon the observations made by the Court a moment ago, I feel that the interests of justice would be best served by not permitting the defendant to proceed pro se on the pending appeals in the Florida Supreme Court. And I will enter an order to that effect.

Thank you, gentlemen.

MR. GREENE: Thank you, Your Honor.

MR. BUSCH: Thank you.

THE COURT: By the way, for the record, the Court is also denying this handwritten motion for writ of habeas corpus ad testificandum as which we referred to before.

MR. GREENE: Thank you, Your Honor.

MR. BUSCH: Your Honor, I would say one thing. I will probably request that this be transcribed, this hearing inasmuch as the appeal -- the appeals are presently pending in the Florida Supreme Court, I would imagine.

THE COURT: Well, I'm going to ask that it be transcribed anyhow, because I think that the Court has some obligation to the Florida Supreme Court to inform the Florida Supreme Court what has been transpired at this hearing. And I think as much as it would be the intention of

either or both counsel to have this hearing transcribed. I will just go ahead and order the Court Reporter to transcribe this hearing, and will transmit it to the Florida Supreme Court along with my order.

MR. BUSCH: Thank you, Judge.

MR. GREENE: Thank you.

(Thus, the proceedings concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I hereby certify that the foregoing transcript is a true and correct transcription of my stenotype notes taken at the time and place indicated therein.

WITNESS my hand and Official Seal at Jacksonville, Duval County, this 10th day of February, A.D., 1981.

Sherrie L. Warren

SHERRIE L. WARREN, a Notary Public and an Official Deputy Court Reporter.